

## CHAPTER III: Land Conservation

[Textbox begin

Results of the 2006 Virginia Outdoors Survey:

- When asked how important is it to protect Virginia's natural and open space resources, 95% of respondents said it was either "important" or "very important" (67% said it was "very important" and 28% said it was "important"). Less than two-percent said it was not important.
- Nearly 78% answered "yes" to the question "Should the state spend public funds to prevent the loss of exceptional natural areas to development?"

More than 70% of those surveyed said they favored outright purchase from willing sellers as an appropriate tool for conserving open space.

Textbox end]

### Land Conservation Findings

- In 2000, the governors of Virginia, Maryland, and Pennsylvania signed the Chesapeake 2000 Agreement, which committed those states to permanently preserve from development 20 percent of the land area in the Chesapeake Bay Watershed by 2010.
- Governor Tim Kaine has stated that a goal of his administration is for the Commonwealth to preserve an additional 400,000 acres of land by 2010.
- Increasing human population and development patterns that consume disproportionate amounts of our rural heritage have been a driving force in Virginia in recent decades. Of all the development that has occurred in the last 400 years, more than a quarter of it has taken place in the last 15 years.
- The population of Virginia is predicted to increase by 5 percent by the year 2010, by almost 15 percent by the year 2020, and by nearly 24 percent by the year 2030. If Virginia continues to grow with the same development patterns as it has in the past, more land will be developed in the next 40 years than has been since the Jamestown settlement was established in 1607.
- As a result of population growth combined with inefficient development patterns, Virginia lost 3.3 million acres, or over 20 percent, of its farmland between 1982 and 1997. Nearly 120 Virginia farms disappear every year.
- Virginia lost almost 100,000 acres of forestland between 1982 and 1997. The Virginia Department of Forestry estimates that only 8.5 million acres of privately owned lands are

likely to remain available for timber production – a quantity unable to sustain the current rate of harvest and the long-term economic base of timberland.

- A Mason-Dixon poll of Virginia voters in January 2003 found that “the highest percentage of voter support – 85 to 90 percent – related to preserving Virginia’s rural character and investing in our agricultural, forestry and natural resource-based industries to keep working farms, forests, and open space.”
- Preserved open-space lands provide benefits in terms of working (agricultural and forestal) landscapes, scenic landscapes, recreation, natural areas and parks, cultural and historic resource protection, natural resource protection, water quality improvement and maintenance, and carbon sequestration, along with the economic benefits associated with these functions.

#### [Insert textbox

Protected lands should benefit the public and possess unique and significant natural, historic, recreational, scenic and cultural resources. Including:

- recreational and park lands
- lands with rare, threatened, or endangered species, fish and wildlife habitat
- agricultural and forestal lands
- historic areas
- open space land with scenic qualities
- lands and other resources designated as part of a locally driven planning process

Characteristics that make particular properties special and worthy of protection include:

- river corridors
- viewsheds
- public access points
- blueways and greenways
- a need identified in the Virginia Outdoors Plan
- support of a local or regional plan
- adjacent to a Virginia Scenic River, Road or Byway
- adjacent to parks
- adjacent to wildlife management areas
- Adjacent to state forests
- a need identified in the Virginia Natural Heritage Plan
- rare or unique species
- biodiversity
- listed on the Virginia Landmarks Register
- historic district
- prime and important soils and farmland

- wetlands
- contiguous forest parcels
- timber value
- unique geological features
- cultural geography
- relationship to development patterns and land use planning

End Textbox]

### **Conservation Lands Recommendations**

- To meet the Chesapeake Bay Agreement goals for watershed protection, and Governor Kaine's stated goal of preserving 400,000 acres of land in the state by 2010, strong state tax incentives for land conservation should be maintained and a dedicated source of funding should be established by the General Assembly.
- As population growth accelerates development pressure, land conservation and sound land use decision making must become prominent considerations in all land-planning efforts at the local, regional, and state levels if we are to effectively conserve lands for future generations.
- Localities, state agencies, and private organizations must make deliberate decisions about how to focus and prioritize their land preservation efforts. To do so, they must develop a method of targeting preservation efforts, using green infrastructure land planning techniques, geographic information systems, local comprehensive plans, and decision support systems such as the Virginia Conservation Lands Needs Assessment.
- Meeting conservation goals will require partnerships among all agencies.
- All organizations undertaking land-preservation projects should strive to ensure that protected lands are offering a wide range of public benefits including water quality protection, habitat preservation, and public access.

### **Introduction**

*When we see land as a community to which we belong, we may begin to use it with love and respect.*

**– Aldo Leopold, A Sand County Almanac**

It is not hard to imagine the Virginia inhabited by Native Americans and viewed by Europeans and Africans as they spread across the landscape in the seventeenth and eighteenth centuries: Wild beaches, bountiful estuaries, grand forests, flourishing fields of varied crops, great mountain vistas, rolling meadows, abundant wildlife and cool, clear streams. It's not hard to imagine,

because much of that landscape remains and indeed it is the Virginia many envision when they think of the Old Dominion today. Unfortunately, more and more of that wild or rural landscape is lost as cities, towns and suburbs expand; and fragmented as more roads and utility lines are built to connect and service the growing and sprawling population.

Of course, much more than pretty views are at risk. The diversity of Virginia's flora and fauna, the quality of its air and water, its cultural heritage, and the very foundation of its agricultural, forestal and tourist economies are vulnerable. A vigorous and comprehensive land conservation strategy is needed to help Virginia meet the challenge of preserving these critical landscape components. To help develop appropriate strategies and tools, it is essential to understand why land conservation is vital for protecting many of Virginia's shared community assets.

### **Biodiversity**

Virginia is home to more than 32,000 native species of plants and animals. Each is part of Virginia's natural tapestry; each has intrinsic value as a fellow species; and each plays a role in the complex web of life that supports the comparatively few familiar and widely appreciated species. The loss of one may lead to the loss of dozens more and it is difficult to know which may be keystones to entire ecosystems. From time to time, obscure organisms reveal answers to some of life's persistent questions – penicillin was discovered in a fungus, shellac from a scale insect, silk from a caterpillar. Some 40 percent of all modern pharmaceuticals are derived from plants and animals. And wild organisms are important genetic reservoirs for improving domestic crops and livestock. Who knows what secrets were lost with the extinction of the Passenger Pigeon? Why risk the extinction of the sun-facing coneflower?

Much biodiversity protection can be accomplished by protecting habitat. For some highly specialized terrestrial species – such as the Virginia endemic vine, Addison's leatherflower, which has a strong affinity for an unusual soil type on south to west-facing slopes – a significant proportion of the species' habitat may be secured by protecting relatively small areas of land. Other species – such as many forest-interior nesting birds – require large blocks of unbroken habitat in order to prosper. Most species benefit from corridors between population nodes in order to interbreed and to reoccupy vacated territory. And some key pieces of Virginia's landscape are critical habitat for brief periods of time – the southern tip of the Delmarva Peninsula, for example, supports millions of migrating birds each fall as they rest and feed in preparation for their flight south across the mouth of the Chesapeake Bay. Others live out their lives in the dark in one of Virginia's more than 4,000 caves. Many depend on the same clean water that supplies most

Protecting habitat for aquatic species is a significant challenge because much relies on protecting watersheds, which are potentially very large areas. Carefully focused watershed protection

efforts will help secure the future for many rare aquatic species that are concentrated in specific river systems, such as the Clinch River in southwest Virginia. Also, efforts to protect riparian zones on farms and working forests will significantly improve conditions for aquatic species throughout the state.

### **Outdoor Recreation**

The 2007 VOP is dedicated to outdoor recreation in addition to green infrastructure and land conservation. Land protection is essential for ensuring outdoor recreation opportunities for Virginia's growing population. Both public and private lands are important. Public recreation areas are increasingly in demand as more private land is developed. However, private land will remain important, particularly for hunting, but also to maintain the scenic vistas that make driving for pleasure one of the top recreational activities for Virginians. Private equestrian trails are also a significant component of outdoor recreation in the state.

### **Water Quality**

The condition of the land has direct and highly significant impact on water quality – the quality of groundwater, the quality of rivers and streams, the quality of ponds and lakes, the quality of estuaries and even the quality of the oceans. The connection is inescapable and cannot be ignored. A naturally vegetated landscape – particularly a forested one – provides the greatest benefits to water quality. Vegetation minimizes erosion, which in turn reduces nutrients and sediments flowing into waterways. Leaves and stems intercept raindrops, reducing their impact on soil, while vegetative debris and roots slow the flow of water across the land surface. Vegetation and debris also allow more water to percolate into the soil, replenishing groundwater, and providing for more regular flows from springs and in streams and rivers. Plants also help capture pollutants and nutrients that arrive with precipitation and that are washed off the neighboring landscape.

Protecting large tracts of land helps ensure these benefits will continue. By and large, Virginians take for granted the water quality benefits provided by privately held forestland – land that is rapidly being converted to other uses. Several other states, such as Florida and New York, long ago recognized the importance of protecting significant portions of watersheds, primarily as a means of ensuring adequate drinking water supplies. In 1987 Florida instituted its Surface Water Improvement Management (SWIM) program and has since set aside XX acres across the state for watershed protection. Virginia would be wise to follow these examples.

### **Historic and Cultural Resources**

History and culture are central to Virginia's identity and directly linked to a large sector of the state's economy – tourism. Thus, protecting Virginia's historic and cultural resources is essential for the state's well being. Historic sites draw people – many out of simple curiosity and

some with serious academic interests – making them vital for tourism and education. They are also important for the state’s burgeoning film industry.

Land protection plays a significant role in preserving important pieces of Virginia’s past and can take on several forms. One commonly recognized form is the protection of actual historic sites – battlefields, settlements, plantations, historic homes, and the like. Typically these are properties that have, by private efforts or by chance, retained many of their original characteristics and require mostly just upkeep and minor restoration. Other sites of historic value may be obscured, but not obliterated, by changes in the landscape. Archeological sites often fall into this category and need to be protected at least until artifacts and valuable information can be extracted from them. Many natural landscapes across Virginia are of invaluable cultural significance to the Native Americans that called Virginia home long before Europeans arrived.

There is also historic value in preserving representative pieces of Virginia’s landscape, regardless of whether or not actual historic events occurred there. Cotton fields, pine savannahs, expansive mountain forests, and long stretches of wild rivers are all part of Virginia’s history. Preserving them is equally important for helping people reconstruct and visualize the past. Sometimes this happens in surprising ways. For example, a small patch of an ancient swamp forest, which had been protected by The Nature Conservancy, yielded important data, deciphered from cypress tree growth rings, for helping historians understand climate conditions during the settlement of Jamestown. Much more of Virginia’s history will surely be discovered, if more land and significant portions of the landscape are protected.

### **Scenic Beauty**

Few things feed the soul like viewing the tapestry of Virginia’s rural landscape from a mountain overlook, or driving through a sun-dappled tunnel of hardwoods along a scenic highway, or just seeing a tractor working a field along almost any secondary road outside of the state’s major metropolitan areas. Virginia’s everyday scenery is an important part of what draws people to Virginia to visit and to live. Protecting these scenic qualities is yet another reason for land conservation, and scenic areas need to be targeted as special priorities for protection.

### **Maintaining a Sense of Place and Community Character**

The local character of many areas of Virginia is closely linked to the nature of the landscape. The tidewater region is closely tied to the fisheries of the Chesapeake Bay, the northern Piedmont is horse and cattle, vineyard and orchard country and Southside is pine, pork and peanut territory. Land conservation can help preserve a region’s sense of place by protecting the natural resources and land uses at its core.

### **Agricultural and Forestal Resources**

Industries centered on agriculture and forestry together represent \_\_\_ percent of Virginia's economy. Land – large swaths of land – is essential to both. Numerous economic factors are causing many farms and forestlands to be developed. Depressed commodity prices due to competition from other countries, rising land costs (and by extension rising property taxes), dwindling interest in the upcoming generation to pursue demanding careers on the land, and the farm-as-pension-fund approach to retirement all lead to many farms and forests being sold for development. Eventually, as forests become smaller and farms more widely separated, the land-based economy enters a downward spiral. The milk-truck driver cannot afford the fuel bill if he must drive further between dairies and a timber harvester cannot justify the setup costs to cut timber off small woodlots. As the supporting businesses disappear, more working lands grow idle or are converted to other uses. Therefore, an important part of preserving the land-based economy is to preserve the land. Such efforts should focus on the most productive lands and areas with intact supporting infrastructure.

### **Cost of Community Services**

Protected land typically enhances the value of nearby residential property. In most cases, a home with a view of a forest or a meadow is more desirable than a similar home with a view of an interstate highway. Recognizing this concept, many local governments strongly support land conservation, understanding that protected, undeveloped land generates more direct tax revenue than the services it requires and that rural residential development typically brings in less taxes than it costs to service. In addition, the increased value of properties near preserved lands means that localities can benefit by permanently protecting green space around new developments. The VCLNA may be used to target conservation lands that would be most economically beneficial to communities.

### **Methods and Strategies for Protecting Open Space and Natural Resources**

In Virginia, there are a number of tools in the land-conservation “toolbox,” including ways for private landowners to carry out voluntary conservation as well as ways that localities can regulate land use to encourage conservation. Open space and significant natural, historic, agricultural, forestal, scenic and recreational resources are protected by a combination of legislated land-use regulations and voluntary mechanisms. These are available to private landowners, private non-profit organizations, and government agencies. Federal and state tax incentives also play an enormously significant role in open space protection.

Most of us are familiar with federal, state, and local government efforts to protect open space through the establishment of public parks and the development of land-use regulations. Less apparent, although equally important, are private land conservation strategies. Critical to the

protection of open space and the preservation of unique natural areas, private land conservation efforts have resulted in the conservation of hundreds of thousands of acres in Virginia. In 1966, the Virginia Outdoors Foundation (VOF) was created to assist private landowners in protecting their properties. In mid-2006, VOF held 1,900 conservation easements, which protected almost 330,000 acres of open space. In addition to VOF, there are several national conservation organizations and more than 30 regional and local land trusts now working to protect Virginia's "uncommon wealth." According to a national survey done in 2003 by the Land Trust Alliance, Virginia ranks 1<sup>st</sup> in the number of conservation easements held and 4<sup>th</sup> in total acres of privately protected land.

The land protection toolkit is becoming more dynamic and diversified, as evidenced by the growing number of strategies available to both public and private conservation agencies and organizations. These include public policy and planning tools, fiscal incentives, regulatory mechanisms and voluntary conservation options. However, no single tool, be it voluntary, regulatory, or incentive based, works well by itself. The size of the Commonwealth, the diversity of interests contained in it, and competing economic and social factors combine to make a single approach ineffective. The following is an overview of the options available to agencies, localities, and individual landowners that help address the challenges of preserving and protecting open space and natural resources.

#### **[Subsection of Methods and Strategies for Protecting Open Space and Natural Resources Land Conservation and Open-Space Planning**

The value of planning lies in its comprehensive approach in providing direction for resource protection to all players in the land-use game. To be effective, the planning process must actively engage key players, groups and stakeholders in working together to reach a common goal. Achieving that goal will require a cooperative effort among federal, state and local public agencies, private conservation organizations and land trusts, landowners and developers.

#### **[Subsection of Methods and Strategies for Protecting Open Space and Natural Resources Resource Protection Tools and Strategies**

Land use planning in Virginia incorporates a number of voluntary and regulatory resource protection tools and strategies. These are available to local governments and private land conservation organizations, developers and individual landowners. Regulatory land use tools must be delegated to localities by the state. Some mechanisms may be voluntarily negotiated with developers as a condition of development. Both governmental agencies and private non-profit organizations can utilize the growing number of voluntary mechanisms in negotiations with private landowners. Tools and strategies are illustrated in the chart below and described in the following section.



**[Subsection of Methods and Strategies for Protecting Open Space and Natural Resources  
Voluntary Land Protection**

<b>Purchase</b>	<b>Donations</b>
Fee Simple Acquisition	Fee Simple Donation
Purchase/Lease Back	Conservation Easements
Purchase of Development Rights	Remainder Interest & Reserved Life Estates
	Natural Area Registry
<b>Combination of Purchase and Donation: Bargain Sale</b>	

**[Subsection of Methods and Strategies for Protecting Open Space and Natural Resources  
Purchase of land**

Full legal title to land and all rights associated with it may be purchased from landowners who voluntarily sell their land for a conservation purpose at a price equivalent to its value at its “highest and best” use. The appraised fair market value of the property is the standard for all sales. Purchasing land at its fair market value has two advantages: the acquisition process is relatively simple, and the rights and privileges of fee simple ownership are rarely challenged. Land can be purchased for open space by:

- **Fee simple acquisition** – Landowners may voluntarily preserve their lands by donating or selling their legal interest in the land (the “fee simple” interest in the land) to a conservation organization (a “land trust”) or government agency. This is the most comprehensive means of affecting control and preservation of land, since the original landowner releases all rights.
- **Purchase and lease-back** – outright purchase of land by a conservation organization or agency, with a subsequent lease back to the original owner who will continue to gain some economic return from the land as agricultural, forestal or open space use. This preserves open space, while ideally generating revenue for the conservation purchaser as well as for the lessee.
- **Purchase of development rights** – Virginia law allows localities to create programs that pay landowners who give up the rights to divide their land for development. The development rights are transferred to the locality in a conservation easement. For more information, see Chapter IV. Green Infrastructure.
- **Bargain sale** – A landowner may also combine a sale and donation by making a “bargain sale,” which allows a conservation agency or organization to obtain the land at a lower price

than appraised value; this enables the land to be protected while providing some immediate funds to the seller. This type of sale can result in a tax deduction for the difference in the price received for the property and its fair market value, and may benefit the landowner by offsetting any capital-gains tax associated with the sale component of the transaction.

### **[Subsection of Methods and Strategies for Protecting Open Space and Natural Resources Donations**

Donations of conservation easements and outright donation of property to a land trust or to a government agency are highly effective and efficient ways of preserving land. In general, these programs generate few legal disputes over property rights and takings issues and often qualify property owners for tax deductions. Voluntary protection programs are best combined with other open space protection strategies to maximize their benefit. Donated land protection programs preserve open space with:

- **Conservation easements** are legally binding agreements between the landowner and the organization or agency that becomes the holder of the easement. The landowner retains ownership of the property while donating certain development rights to a qualified organization. Although each easement is different, they typically “run with the land” as an encumbrance on the title, limiting the use of the property. In Virginia, easements may be donated to a public body under the Open Space Lands Act or to a private, non-profit conservation organization under the Conservation Easement Act. The Virginia Outdoors Foundation and national, regional, and local land trusts (most often private, non-profit organizations) educate landowners about the benefits of conservation easements, negotiate the terms of easements, and hold them once they are established. When funds are available, land trusts may negotiate the purchase of easements. Increasingly, land trusts are dedicating greater resources to stewardship, especially as lands under easement change hands, with new owners perhaps not fully recognizing the limitations placed on the land. With more than 35 conservation organizations in Virginia, land trusts are a fast-growing mechanism for land preservation and have helped Virginia achieve a prominent place in this nationally important land conservation movement.

By donating these rights to a conservation organization or government agency, the landowner can continue to possess and enjoy the land while preserving the land’s conservation values. Because particular rights that are relinquished and the conservation values being protected can vary from one conservation easement to another, the process is flexible and involves negotiation between the landowner and the conservation easement holder. This means that the desire of the landowner to protect the property from development need not require the loss of all economic use of the property

If the land has significant habitat for rare wildlife species, for example, the conservation easement may remove all rights to subdivide the land for development or to harvest any timber, while an easement on agricultural or forested land may allow the construction of additional farm structures or selective timber harvesting. The particular restrictions spelled out in a conservation easement are a list of the rights that are surrendered “in perpetuity,” so that all future owners of the land are subject to the same restrictions. The organization holding the easement provides long-term monitoring to ensure that easement values remain protected over time.

A term easement is a type of conservation easement that does not last “in perpetuity” but is only for a specified term of years. Although Virginia law allows for such easements, they are not often used by state or private conservation groups since they do not result in meaningful long term preservation of resources. and landowners do not favor them since they do not qualify for either federal or state tax benefits. Furthermore, neither state nor federal grant funds would be available for purchase of such easements. These easements may have limited use by localities in timing of development.

- **Remainder interests and reserved life estates** – these arrangements allow the owner to live on, and use, the land during his/her lifetime and/or the lifetime of other family members as designated. At the death of the last family member, ownership falls to the designee, usually a public or non-profit land preservation entity. The value of such a donation is different from an outright gift, but can still be considered a charitable contribution for federal income tax deduction purposes.
- **Stewardship agreements** – these provide less binding mechanisms for conservation organizations and landowners to manage property for specific conservation benefits. Under these agreements, the landowner manages the property in accordance with the provisions of a stewardship plan developed in cooperation with the conservation organization. Stewardship agreements often are intended to provide responsible and knowledgeable landowners with an opportunity to plan and implement resource-management strategies with reduced government oversight and regulation, and to provide an incentive for landowners to enhance and restore habitat, water quality, or other natural resources. In Virginia, the Natural Heritage Program at the state’s Department of Conservation and Recreation offers natural-area management agreements; the Nature Conservancy uses stewardship agreements as well.
- **The Virginia Registry of Natural Areas** – managed by DCR’s Natural Heritage Program, this registry encourage voluntary conservation of lands that support rare species and significant natural communities. Both private and public lands are eligible. Landowners who participate in the registry commit to voluntarily preserve natural heritage resources on their

land to the best of their ability, to notify DCR of any potential threats to these resources, such as pollution or clearing of land, and to notify DCR of any intent to sell or transfer ownership of the property. By informing and recognizing the landowners of these significant natural areas, the Virginia Registry of Natural Areas program reduces the chance that these resources may be unknowingly destroyed. Registration is a voluntary and nonbinding agreement that may be terminated by either party at any time, and provides no rights of public access unless requested by the landowner. Locations of registered natural areas are not publicized unless the owner so desires.

## **Funding**

Funds to be used for the protection and/or preservation of natural resources through the outright purchase of land and conservation easements and management agreements are available from local, state and federal sources, as well as private non-profit organizations. State programs include the Virginia Land Conservation Fund, the Land and Water Conservation Fund and Water Quality Improvement Act funds. Federal monies dedicated to the preservation and protection of open space include the Forest Legacy Fund, Farm and Ranch Protection Program, and the Conservation Reserve Enhancement Program, both of which are administered by state agencies for the U.S. Department of Agriculture. More information about funding can be found in Chapter II-H.

### **[subheading of Funding]**

#### **Tax benefits**

Tax incentives for land conservation are offered at both the state and federal level. In addition, there are local tax benefits related to conservation easements.

### **[subheading of Funding]**

#### **Federal tax benefits of conservation easements**

The Internal Revenue Code (IRC) allows two types of tax benefit for land conservation – a federal income tax deduction and an estate tax reduction and exclusion. The amount of the federal income tax deduction is based on the diminution in value resulting from the conservation easement as determined by an appraisal that meets the standards set forth in the IRC. Only easements granted in perpetuity and that “qualify” under the IRC are eligible for the tax benefit. The federal estate tax benefit includes a lowering of the total size of the taxable estate so that the deceased’s heirs will not be required to pay taxes on the extinguished development rights. In addition to this tax savings, the estate of an easement donor may exclude up to 40% of the value of the protected land or \$500,000 (whichever is less) from the taxable estate. Finally, additional provisions of the IRC allow the heirs to elect to donate a “post mortem” conservation easement and have the land taxed as if the easement had been in place at the time of death. This is often a

tool that is used when the heirs otherwise may need to sell all or a portion of the land in order to pay estate taxes.

### **[subheading of Funding**

#### **Income tax deductions – easements as a charitable gift**

The IRC (§ 170 (h)) allows charitable gift for qualified conservation contributions, which include the donation of land in fee or the donation of a perpetual conservation easement. The donation must be made to a “qualified” organization exclusively for “conservation purposes.”

The code specifically defines “conservation purposes.” The regulations outline four such conservation purposes

- preservation of land areas for outdoor recreation by, or the education of, the general public
- protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem
- preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the public or pursuant to public conservation policy
- preservation of historically important land or certified historic structure

The landowner donating an easement is permitted to take as an income deduction for the full value of the donation at a rate of up to 50 percent of their adjusted gross income in the year of the gift, or 100% of AGI for farmers and forestland owners. A private certified appraiser evaluating the easement must determine the value of the gift. If not exhausted the first year, the amount of the gift can be carried forward for ten subsequent years.

### **[subheading of Funding**

#### **Estate tax benefits of easements**

The Farm and Ranch Protection Act (1997), Section 2031(c) of the IRS Code, allows for an exclusion of up to 40 percent of the value of land or \$500,000 (whichever is less) under conservation easement from federal estate taxes. To qualify, the easement must be perpetual, must meet the conservation purposes of § 170(h) above (except that preservation of a historic area or structure is excluded),. The easement may be given by a landowner who has owned his land for at least three years or by the executor of the estate of such a landowner. The intent of this provision is to provide relief from estate taxes for farmers and ranchers passing land to their children who might otherwise be forced to sell the land to pay estate taxes.

### **[subheading of Funding**

#### **Virginia state tax benefits of conservation easements**

The charitable gift deduction taken for a conservation easement on the federal tax return results in the same diminution in taxable income for state income tax purposes as it does for federal

income purposes. Virginia state income tax is defined (Virginia Code § 58.1-322.A) as a resident's "federal adjusted gross income for the taxable year" subject to some modifications, none of which affects the charitable deduction of a qualified conservation contribution under § 170(h) of the IRS Code.

The most important Virginia state tax benefit related to the donation of easements is a credit enabled by the Virginia Land Conservation Incentives Act of 1999. This statute (Virginia Code § 58.1-510 *et seq.*) allows a tax credit of an amount equal to 40 percent of the value of a gift of easement up to \$100,000 per year. The unused portion of the credit may be carried forward for a maximum of ten consecutive tax years.

In addition, for purchased easements, a Virginia state tax exclusion (Virginia Code Sec. 58.1-322 and 58.1-40) permits a landowner to exclude capital gains from the sale of land on which an open space easement has been placed and on which Virginia capital gains tax would otherwise have been levied.

### **[subheading of Funding**

#### **Local tax benefits of conservation easements**

In those localities where the land use assessment tax program has been implemented, counties must include property subject to a conservation easement in the land use taxation program. In most cases the land is already enrolled in that program and no additional reductions in the local property taxes result from the easement. In localities that have not implemented the land use assessment tax program, the diminution in the land's market value as a result of the easement should lower the amount of tax paid on that value. In these localities, local assessors have, in some cases, been reluctant to give a landowner the same diminution in value allowed by the IRS, but they are required by state law to recognize the restricted value of the land with the easement in place (Virginia Code § 10.1-1011).

A 1993 amendment to the Conservation Easement Act relieved the landowner of the responsibility of filing annual applications or other requirements for qualifying for local land use assessment. The landowner with a permanent qualifying easement (whether to a public body or 501(c)(3) organization) automatically receives the benefit of the land use tax rate as long as the locality has implemented one of the four categories of land use tax and the land otherwise qualifies. In the few counties with only one or two categories of land use tax, such as agriculture and horticulture but not forestry, the easement will result in a tax savings on the portion of the land not otherwise eligible for the use value assessment rate.

### **[subheading of Funding**

#### **Land use taxation**

In Virginia, localities can elect to reduce the real estate tax burden on unimproved land. The Commissioner of Revenue determines if the land is suitable for land use valuation. When the locality accepts the application for the land use valuation, the property tax is a reflection of productivity rather than on fair market value that results in substantially lower real property taxes on the land. The Commissioner of Revenue uses the recommendations of the State Land Evaluation Advisory Council (SLEAC) to establish rates for the productive value of the land when calculating the real property tax obligation of the landowner. Land use values are determined for agriculture, horticulture, forestry and open-space. For more information about land use taxation or Virginia's Land Use Assessment Program and SLEAC, see <http://usevalue.agecon.vt.edu>. Virginia statutes for land use taxation can be found at Virginia Code §§ 58.1-3230 through -3244.

The locality may take an individual property out of land use assessment when a landowner changes the use of the property (for instance, if the owner harvests timber with no provision to reforest, or if a landowner is causing pollution by not following accepted best management practices, or if the property is being developed). Likewise, landowners may elect at any time to remove the property from land use to take advantage of demand for development property. Although this taxation program does not offer long-term conservation, it removes some of the financial pressure for sale and development of land. The open space class of lands such as scenic rivers and Virginia Byways makes properties automatically eligible for the special land use tax program.

### **[subheading of Funding**

#### **Agricultural and forestal districts**

Localities can create special districts with voluntary landowner initiative to temporarily reserve farm and forestland. These special districts are Agricultural, Forestal, or Agricultural and Forestal Districts (AFDs). The districts are a way for counties to encourage the use of land for agriculture and/or forestry activities. Only landowners who agree to limit development of the property during the number of years the district is in effect, which is from four to 10 years, can initiate the district. At least 200 acres are required to form a district. Landowners have the right to remove their land from the district with no penalty when the term expires. Lands in such districts have reduced taxes corresponding to land use rather than fair market value and are allowed exceptions to laws that would restrict farming or forestry in the district. Details of Agricultural and Forestal Districts can be found in Virginia Code §§ 15.2-4300 *et seq.*

## **Land Conservation Organizations in Virginia**

[subsection of Land Conservation Organizations in Virginia]

### **Land Trusts**

There are many private, nonprofit conservation organizations that protect land. Each typically serves a particular region of the state and/or exists for a particular purpose, such as habitat protection or historical preservation. Organizations focusing mainly on land protection are typically called “land trusts” or “conservancies.” A directory of land trusts in Virginia is available at *[URL to be determined very soon]*.

Nonprofit organizations in Virginia qualified to accept land for protection are defined by the Virginia Conservation Easement Act (Virginia Code §§ 10.1-1009 through 10.1-1016) as being a charitable corporation, charitable association, or charitable trust that has been declared exempt from taxation pursuant to § 501(c)(3) of the federal tax code, and the primary purposes or powers of which include

- retaining or protecting the natural or open-space values of real property
- assuring the availability of real property for agricultural, forestal, recreational, or open-space use
- protecting natural resources
- maintaining or enhancing air or water quality or
- preserving the historic, architectural or archaeological aspects of real property

These qualified land conservation organizations are defined as “holders” in the act, essentially meaning they are eligible to acquire and hold a conservation easement by gift, purchase, devise or bequest. These groups must have had a principal office in the Commonwealth for at least five years. Until such a group meets these requirements, it may co-hold a conservation easement with another holder that meets the requirements.

In addition to holding easements, many land trusts and conservancies buy or are given land. There are also many conservation organizations that do not actually hold easements or acquire land, but instead work to educate and promote use of the various land conservation tools.

Land conservation organizations work with local planning authorities and often conduct their own initiatives to identify and target priority lands to be preserved in their own regions. One example of this is The Nature Conservancy’s Conservation by Design initiative. This initiative lays out a conservation approach comprised of four fundamental components

- setting priorities through ecoregional planning



- developing conservation strategies
- taking direct conservation action and
- measuring conservation success

### **[subheading of Land Conservation Organizations in Virginia**

#### **Virginia Outdoors Foundation**

Website: [www.virginiaoutdoorsfoundation.org](http://www.virginiaoutdoorsfoundation.org)

Contact: Virginia Outdoors Foundation, 101 N. 14<sup>th</sup> St., Richmond, VA 23219, 804-225-2147

The Virginia Outdoors Foundation (VOF) was created in 1966 (§§ 10.1-1800 through 10.1-1804) to promote the preservation of open-space lands and encourage private gifts of money, securities, land or other property to preserve Virginia's natural, scenic, historic, open-space and recreational areas. Open space easements are the primary mechanism VOF used to accomplish its mission. VOF's easements protect a wide variety of natural resources, including watershed areas, settings for historic homes, scenic views, lands adjacent to public parks and game preserves, and more. Thanks in part to new state and federal financial incentives available to landowners with perpetual easements, the VOF conservation easement program has grown by leaps and bounds. In 1999, VOF put a little more than 11,400 acres under conservation easements, but in 2005 the program had grown so much that VOF put conservation easements on more than 41,000 acres. As of 2006 VOF held easements on 1,900 properties with more than 329,800 acres in 91 local jurisdictions.

As the conservation easement program matures and land under easement changes hands, VOF must be in contact with heirs or new owners to make them aware of and understand the terms of the particular easement. Subsequent divisions of eased property result in many more individual properties in need of monitoring and stewardship. For these and other reasons, the VOF staff constantly responds to questions from landowners, prospective buyers, real estate agents and attorneys. Staff also reviews forestry plans, building plans, and VDOT road projects to make sure easement values remain protected. This stewardship function of the conservation easement program is crucial to overall success of the program.

Most of the foundation's operating expenses come from annual appropriations by the General Assembly. Other sources include donations, rental and interest income. Over the years VOF has received private contributions for land purchases or other special projects. The General Assembly created the Open-Space Lands Preservation Trust Fund (OSLPTF) in 1997 to help landowners with costs of conveying conservation easements and to purchase all or part of the value of easements. Funding priority is given to applicants owning family farms, demonstrating financial need, and for cost-only reimbursement projects. Visit

[www.virginiaoutdoorsfoundation.org/ptf.htm](http://www.virginiaoutdoorsfoundation.org/ptf.htm) for more information about the Open-Space Lands Preservation Trust Fund. **[subheading of Land Conservation Organizations in Virginia]**

### **Virginia's United Land Trusts (VaULT)**

Virginia's United Land Trusts (VaULT) organized in 2000 to address the growing interest and number of organizations involved in land conservation. It represents about 30 private land conservation organizations in Virginia. The group's goals are to promote land conservation efforts statewide, to create or build land trust capacity, to foster greater coordination and communication between land trusts in Virginia, to coordinate private land conservation efforts with those of public sector agencies thus better enabling effective statewide conservation planning and green infrastructure promotion, and to promote high professional standards for land trusts in Virginia.

In January, 2004, VaULT produced a strategic plan, *Heritage Virginia*, to serve as a blueprint for public and private land conservation efforts. The vision presented in the plan is one of the land trust community working in close partnership with state, local and federal governments to:

- create corridors of preserved lands;
- better educate stakeholders about conservation options;
- strengthen the capacity of land trusts to preserve more land;
- create more partnerships; and
- increase funding for land conservation.

### **[subheading of Land Conservation Organizations in Virginia]**

#### **National and Regional Land Conservation Organizations**

There are several national and regional land conservation organizations as well. Some focus on particular resources and some provide generic information useful to all land conservation organizations. Just a few examples include:

- The Land Trust Alliance, which acts as the convener, strategist and representative of land trusts across America.
- The Trust for Public Land works to conserve land for people to enjoy as parks, community gardens, historic sites, rural lands, and other natural places, ensuring livable communities for generations to come.
- The Conservation Fund works across all 50 states to preserve each region's unique natural resources, cultural heritage and historic places.
- The American Farmland Trust is dedicated to protecting our nation's strategic agricultural resources.

- The Nature Conservancy
- The Chesapeake Bay Foundation
- The Piedmont Environmental Council

Links to these and other organizations can be found at <http://www.dcr.virginia.gov/olc/wheretofind>.

## **Government Agencies**

There are numerous agencies in the Commonwealth with land conservation roles. Many are qualified to accept land or easements from landowners, and they carry out a wide variety of land conservation programs. In fact, the Virginia Outdoors Foundation holds more conservation easement than any other easement holder in the nation and is the premier easement holding entity in the Commonwealth holding approximately 95% of all conservation easements in Virginia.

State agencies qualified to accept land for conservation purposes include those having authority to acquire land for a public use, or any county or municipality, any park authority, any public recreational facilities authority, any soil and water conservation district, any community development authority, or the Virginia Recreational Facilities Authority. This authority is provided under the Virginia Open-Space Land Act (§§ 10.1-1700 through 10.1-1705). The Open-Space Land Act provides public bodies (i.e., agencies) with the authority to acquire properties or interests in property or designate property for use as open-space land. “Open-space land” means any land provided or preserved for (i) park or recreational purposes, (ii) conservation of land or other natural resources, (iii) historic or scenic purposes, (iv) assisting in the shaping of the character, direction, and timing of community development, or (v) wetlands. Public bodies may also acquire fee simple title or other interests in real property, including easements for the conservation of farm and forestlands.

## **[subheading of Government]**

### **State Agency Programs Related to Land Conservation**

#### **Virginia Department of Conservation and Recreation**

The Virginia Department of Conservation and Recreation’s (DCR) mission is to conserve, protect, enhance and advocate the wise use of the Commonwealth’s unique natural, historic, recreational, scenic and cultural resources. As such DCR is among the agencies authorized to acquire by gift or purchase areas, properties, lands or any estate or interest therein, of scenic beauty, recreational utility, historical interest or biological significance for the use, observation, education, health and pleasure of the people of Virginia.

#### ***Virginia Natural Heritage Program***

Website: [www.dcr.virginia.gov/dnh/](http://www.dcr.virginia.gov/dnh/)

Contact: Virginia Department of Conservation and Recreation, 217 Governor St., Richmond, VA 23219, (804) 786-7951

The Virginia Natural Area Preserves Act (NAPA, §§ 10.1-209 through 10.1-217) provides DCR the authority to establish and manage a system of dedicated state natural area preserves to conserve Virginia's biological resources. Under the NAPA, DCR is responsible for identifying and maintaining a database on the state's natural heritage resources, as well as protecting and managing them. DCR has established and manages the preserve system on both public and private lands. The system contains 46 preserves totaling 41,196 acres. DCR owns 39 preserves, and individuals, organizations, or local governments own seven.

"Dedication" means the transfer to the Commonwealth of an estate, interest, or right in a natural area to become part of the State Natural Area Preserve System. DCR's director may accept the dedication of natural areas on lands deemed to qualify as natural area preserves. Once dedicated, a natural area preserve shall be managed in a manner consistent with continued preservation of the natural heritage resources it supports.

#### ***Virginia Scenic Rivers Program***

Website: [www.dcr.virginia.gov/lanm\\_sum.htm](http://www.dcr.virginia.gov/lanm_sum.htm)

Contact: Virginia Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, (804) 786-1119

The Virginia Scenic Rivers Program (§10.1-400 et. seq.) identifies, recognizes, and provides a level of protection to rivers or streams whose scenic beauty, historic importance, recreational significance and natural characteristics make them important resources.

#### ***Virginia Byways and Scenic Highways Program***

Website: [www.dcr.virginia.gov/lanm\\_sum.htm](http://www.dcr.virginia.gov/lanm_sum.htm)

Contact: Virginia Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, (804) 786-1119

The Virginia Byways and Scenic Highways Program (§33.1-62 et. seq.) authorizes the Commonwealth of Virginia Transportation Board to recognize certain roads as Scenic Highways or Virginia Byways. As of 1999, 1,750 miles of roadway had been officially recognized as such.

#### ***Virginia Cave Protection Program***

Website: [www.dcr.virginia.gov/dnh/cavehome.html](http://www.dcr.virginia.gov/dnh/cavehome.html)

Contact: Virginia Department of Conservation and Recreation, 217 Governor St., Richmond, VA 23219, (804) 371-6205

The Virginia Cave Protection Act (§10.1-1000-1008) was passed to conserve and protect caves, karstlands and cave geological resources as well as to advocate the wise use of these resources.

Program staff identifies significant caves, and provides cave management expertise, educational materials and conservation measures.

### **Virginia Land Conservation Foundation**

Website: [www.dcr.virginia.gov/vlcf/](http://www.dcr.virginia.gov/vlcf/)

Contact: Virginia Department of Conservation and Recreation, 203 Governor St., Richmond, VA 23219, (804) 225-2048, email [landcon@dcr.virginia.gov](mailto:landcon@dcr.virginia.gov)

The Virginia Land Conservation Foundation (VLCF) (§§10.1-1017 through 10.1-1026) provides grants to acquire fee simple title or interests in property for:

- the protection or preservation of ecological, cultural or historical resources
- recreational purposes
- state forest lands
- threatened or endangered species, fish and wildlife habitat, natural areas
- significant agriculture and forestry
- open space

The VLCF also provides grants to state agencies, including the Virginia Outdoors Foundation, and matching grants to other public bodies and holders for acquiring fee simple title to or other rights, interests or privileges in real property for the protection or preservation of

- ecological, cultural or historical resources
- lands for recreational purposes
- lands for threatened or endangered species, fish and wildlife habitat, natural areas
- significant agricultural and forestal lands
- open space

The VLCF administers the Virginia Land Conservation Fund. DCR helps administer, manage and protect VLCF's lands. The fund received \$1.75 million in FY 1999 and \$6.2 million in FY 2000. Another \$3.4 million was provided in FY 2000 solely for battlefield protection. Grants have been awarded to 31 projects, conserving an estimated 4,557 acres of open-space land. Approximately 1,257 acres of four historic battlefields were also protected. Another \$1.55 million went to the Virginia Outdoors Foundation (VOF) for farm and forestland.

### **Virginia Department of Forestry**

Website: [www.dof.state.va.us](http://www.dof.state.va.us)

Contact: Virginia Department of Forestry, 900 Natural Resources Dr., Charlottesville, VA 22903, (434) 977-6555

One of the Virginia Department of Forestry's (DOF) primary goals is to conserve Virginia's forestland base. Thousands of acres of forestland are lost each year to urban and other development. DOF manages more than 50,000 acres of state forestland and helps other state agencies manage state-owned forestland. The agency's mission is to "protect and develop healthy, sustainable forest resources for all Virginians." This statement indicates the agency's dedication to conserving "working forests" that provide forest products, wildlife habitat, water quality protection, recreation opportunities and aesthetic benefits. DOF professionals work with private, non-industrial landowners, localities and other stakeholders to conserve, manage and protect Virginia's forests. Contact Department of Forestry at (434) 977-6555 or visit the agency website at [www.dof.state.va.us](http://www.dof.state.va.us) to learn more.

DOF programs include:

- Forest stewardship - forest management planning
- Forestry Legacy - forest conservation easements
- Riparian restoration technical assistance
- Urban and community forestry
- Forest insect and disease assistance

### **Forest Legacy Program**

The Forest Legacy Program aims to protect and conserve important forests threatened by conversion to non-forest uses, such as development. Led by DOF, Forest Legacy is an important tool for preserving Virginia's forests through the coming years of anticipated, continued growth. Funded through the federal 1990 Forest Stewardship Act, Virginia may use Forest Legacy funds to purchase conservation easements or land. DOF plans to focus most of its efforts on purchasing conservation easements to enable conservation of the greatest amount of forestland. Priority will be given to threatened forestlands with important values such as the protection of water quality, fish and wildlife habitat, recreation, timber production, rare communities, or scenic and aesthetic characteristics.

### **Virginia Department of Historic Resources**

Website: [www.dhr.state.va.us](http://www.dhr.state.va.us)

Contact: Virginia Department of Historic Resources, 2801 Kensington Ave., Richmond, VA 23221, (804) 367-2323, email [webmaster@dhr.state.va.us](mailto:webmaster@dhr.state.va.us)

The Virginia Department of Historic Resources (DHR) is the state's historic preservation office. Its mission is to foster, encourage and support stewardship of Virginia's significant historical, architectural, archaeological and cultural resources.

### **[subheading of Virginia Department of Historic Resources Historic Preservation Program]**

Virginia's Historic Preservation Program allows historic landmarks to remain in private ownership and on local tax rolls while simultaneously ensuring that the historically significant aspects of these landmarks will be preserved forever. Founded in 1966, all historic easements have been either voluntarily donated by private owners or given as a requirement for receiving a state grant. Protected resources range from colonial mansions to archaeological sites to civil war battlefields.

### **Virginia Department of Agriculture and Consumer Services**

Website: [www.vdacs.state.va.us](http://www.vdacs.state.va.us)

Contact: William P. Dickinson, Jr., Virginia Department of Agriculture and Consumer Services, 1100 Bank St., Richmond, VA 23219, (804) 786-3501, email [wdickinson@vdacs.state.va.us](mailto:wdickinson@vdacs.state.va.us)

The Virginia Department of Agriculture and Consumer Services (VDACS) promotes economic growth and development of the state's agriculture, encourages environmental stewardship and provides consumer protection.

### **Farmland Preservation**

The 2002 session of the Virginia General Assembly established the Virginia Agricultural Vitality Program in the Virginia Department of Agriculture and Consumer Services (VDACS). The new program has several components, one of which is farmland preservation.

In that regard, VDACS has developed a model purchase of development rights (PDR) program localities might use in developing their own PDR programs. To develop the model PDR program, the commissioner named a VDACS Farmland Preservation Task Force. This task force is comprised of representatives of public agencies (including Virginia Cooperative Extension, Virginia Tech, Virginia Department of Forestry, Virginia Department of Conservation and Recreation, Virginia Outdoors Foundation, Department of Business Assistance and others) as well as farmers, farm interest groups, representatives of the environmental community and the Virginia Association of Counties.

The group has held meetings throughout the state since 2001. So far the group has developed a vision for farmland preservation and heard from localities with a PDR program. These include Virginia Beach and Albemarle, Clarke, Fauquier, James City and Loudoun counties. The group also heard from PDR specialists representing Lancaster County, Penn., Maryland, and Pennsylvania. *[NEED MORE UPDATING HERE]*

### **Virginia Department of Game and Inland Fisheries**

Website: [www.dgif.state.va.us](http://www.dgif.state.va.us)

Contact: Virginia Department of Game and Inland Fisheries, 1010 W. Broad Street, Richmond, VA 23230, (804) 367-1000

While a fundamental goal of the Virginia Department of Game and Inland Fisheries (VDGIF) is wildlife habitat management, this work is consistent with land conservation efforts. VDGIF's 30 wildlife management areas, comprising about 190,000 acres, provide a rich variety of wildlife habitat suitable for hunting and fishing as well as viewing wildlife, unique plant communities and spectacular scenery. In addition to habitat management on its property, VDGIF professionals share with other state agencies, schools, private citizens, farmers and corporations the technical know-how in restoring and preserving habitat. The agency offers various programs, information, workshops, publications and technical assistance on land management and conservation. Learn more by contacting VDGIF's wildlife staff at (804) 367-1000 or visit the agency website, [www.dgif.state.va.us](http://www.dgif.state.va.us).

VDGIF programs include:

- Habitat Partners
- Forest Stewardship
- Wetlands restoration and preservation technical assistance
- Backyard Habitat
- Technical assistance for small game and quail habitat

### **Management plans**

Three of the largest landowners in the commonwealth – the National Park Service, the U.S.D.A. Forest Service, and the U.S. Fish and Wildlife Service – develop and follow management plans for more than two million acres in Virginia. With some areas dedicated to open space use, some to preservation, and other areas available for recreation, it is apparent that how this space is managed influences significantly the resources available to the public. Similarly, state agencies such as the Department of Conservation and Recreation, the Department of Game and Inland Fisheries, and the Department of Forestry develop and implement plans appropriate to the resources for which they are responsible. Regional and municipal park and recreation agencies also prepare management plans for their larger parks.

### **Glossary**

**Conservation easement:** legally binding agreements between the landowner and the organization or agency that becomes the holder of the easement. The landowner retains ownership of the property while donating certain development rights to a qualified organization.

**Fee simple:** absolute title to land, free of any other claims against the title, which one can sell or pass to another by will or inheritance.

**Highest and best use:** that use of land, from among reasonably probable and adequately supported alternative uses, which is legally permissible, physically possible, financially feasible,



and maximally productive. The highest and best use must occur within the reasonably near future and can't be remote or speculative.

**Land trust:** local, regional, or statewide nonprofit conservation organizations directly involved in helping protect natural, scenic, recreational, agricultural, historic, or cultural property.